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 CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

HASTINGS COLLEGE OF THE LAW, a
 public trust and institution of higher education
 duly organized under the laws and the
 Constitution of the State of California;
 FALLON VICTORIA, an individual; RENE
 DENIS, an individual; TENDERLOIN
 MERCHANTS AND PROPERTY
 ASSOCIATION, a business association;
 RANDY HUGHES, an individual; and
 KRISTEN VILLALOBOS, an individual,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
 FRANCISCO, a municipal entity,

Defendant.

Case No. 4:20-cv-3033-JST

**DEFENDANT CITY AND COUNTY OF SAN
 FRANCISCO'S STATEMENT OF NO
 POSITION ON MOTION FOR
 INTERVENTION**

Trial Date: Not Set

1 To address the urgent, dangerous and unacceptable conditions in the Tenderloin caused by the
2 confluence of the COVID-19 emergency and the City's longstanding homelessness crisis, Plaintiffs and
3 the City collectively spent hundreds of hours over the past month and a half working together to find
4 solutions that will improve the living conditions of both housed and unhoused residents of the
5 Tenderloin. Through the tireless dedication of Magistrate Judge Corley who held eight settlement
6 sessions (some of which lasted eight hours or more), the parties were able to bridge gaps that
7 originally seemed unbridgeable, and find solutions to problems that often seem intractable. The
8 parties' negotiations culminated in the Stipulated Injunction, filed with the Court on June 12, 2020, *see*
9 ECF No. 51 ("Stipulated Injunction"), in which the City agreed to provide hotel rooms or safer
10 sleeping locations for the occupants of 70% of the tents currently on the sidewalks of the Tenderloin.
11 The terms of the Stipulated Injunction represent a massive commitment of resources by the City, and
12 reflect Plaintiffs' and the City's shared goal to improve living conditions in the Tenderloin for housed
13 and unhoused residents alike.

14 Although the Proposed Intervenors were aware of this litigation and even admit that they knew
15 settlement negotiations were proceeding at a rapid pace, *see* ECF No. 46, the Proposed Intervenors did
16 not attempt to join the settlement discussions. They waited until over a month after Plaintiffs filed
17 their complaint and just days before the parties reached an agreement to even attempt to join this
18 litigation. And now, based purely on speculation about how the City will implement the agreement,
19 the Proposed Intervenors have announced their opposition to the Stipulated Injunction and their desire
20 to send the parties back to the drawing board so that they can be a part of "any negotiated settlement."
21 Supp. Br. at 1. The Proposed Intervenors declare that they now wish to "participate in the negotiation
22 process," but they fail to recognize that the negotiations are already over. Supp. Br. at 6.

23 Under Ninth Circuit authority, the Motion for Intervention is untimely. *Orange County v. Air*
24 *California*, 799 F.2d 535, 538 (9th Cir. 1986) (holding intervention untimely where parties already
25 reached settlement agreement but the stipulated injunction had not yet been entered by the court;
26 explaining that the fact that the parties had already reached an agreement "weigh[ed] heavily" against
27 intervention); *Empire Blue Cross & Blue Shield v. Janet Greeson's A Place For Us, Inc.*, 62 F.3d
28 1217, 1219 (9th Cir. 1995) (explaining that "parties who delay in attempting to intervene, and who end

up doing so only after the original parties have reached an acceptable settlement, should not be able, without good reason, to intervene when their intervention may well cause substantial prejudice to the original parties.”). Further, given the Proposed Intervenor’s expressed desire to destroy the agreement the parties and Magistrate Judge Corley worked so hard to achieve, intervention would certainly prejudice the parties. *Air California*, 799 F.2d at 538 (holding intervention that would “be the undoing” of proposed settlement agreement would “[c]learly. . . prejudice the parties involved”); *Empire Blue Cross & Blue Shield*, 62 F.3d at 1220 (holding that parties to litigation may be prejudiced where intervener seeks a “modification” that “would ‘unravel’ the original settlement”).

Nonetheless, despite the concerns expressed above, the City takes no position on the Motion for Intervention; the City welcomes the opportunity to work with the Proposed Intervenor to implement the Stipulated Injunction in a way that addresses their concerns, whether or not their Motion is granted. There is no doubt that the Proposed Intervenor has a long history of providing services to homeless persons in San Francisco, and deep ties to the community. The City hopes to benefit from their expertise and partner with the Proposed Intervenor as the City works to improve living conditions for both the housed and unhoused residents of the Tenderloin.

While the City welcomes the Proposed Intervenor’s involvement in the implementation of the Stipulated Injunction, the Proposed Intervenor has not demonstrated any reason why the Stipulated Injunction should not be entered by the Court. Proposed Intervenor has not identified any provision of the Stipulated Injunction that is unlawful or that would violate the rights of unhoused persons. Instead, Proposed Intervenor bases their opposition on their speculation about how the City will implement the agreement. The Proposed Intervenor notes that they have “questions” about the Stipulated Injunction, but instead of seeking answers to those questions, they offer objections to the agreement that are speculative at their best, and outright false at their worst. Supp. Br. at 1. They speculate that the City will fail to address the needs of unhoused persons with disabilities. Supp. Br. at 5. They predict that the City will not follow the law with respect to the “civil and constitutional rights” of the unhoused. Supp. Br. at 1. They leap to the conclusion that the City lacks plans or procedures for accomplishing the commitments in the Stipulated Injunction, simply because the Stipulated Injunction itself does repeat the City’s already existing processes and procedures. They

1 fault the Stipulated Injunction for not spelling out how many hotel rooms or safe sleeping placements
2 will be created and what the duration of those placements will be, even though those facts are
3 currently unknowable and will depend on the duration of the COVID-19 emergency. Supp. Br. at 5.
4 They jump to the conclusion that the City will use “police enforcement” to “criminalize indigent,
5 homeless people,” although nothing in the Stipulated Injunction says so and the City does not intend to
6 do so. Supp. Br. at 5, 7. They claim that the “proposed Stipulated Injunction encourages the unlawful
7 seizure and destruction of people’s property,” but do not identify any provision that does so. Supp. Br.
8 at 7. They worry that the “forced relocation of unsheltered individuals without provision of adequate
9 shelter” could increase the spread of COVID-19, but the City agrees. Supp. Br. at 9. That is why the
10 Stipulated Injunction describes the City’s plan to reduce the number of tents on the street in the
11 Tenderloin *by providing hotel rooms or safe sleeping sites* to the occupants of those tents. They claim
12 that the “Stipulated Injunction’s stated goal is to rapidly remove all unhoused persons from the
13 Tenderloin District’s public spaces,” Supp. Br. at 5, when actually the Stipulated Injunction’s stated
14 goal is to *provide shelter and safe sleeping sites for persons who are currently forced to live in tents*
15 *on the sidewalk*. ECF No. 51.¹

16 In short, the Proposed Intervenors are shadowboxing against a phantom enemy. They are
17 opposing the City’s genuine efforts to improve living conditions for both housed and unhoused
18 persons in the Tenderloin based on pure speculation about what they fear the City might do, rather
19 than giving the City the opportunity to better serve the Tenderloin while following the law. The City
20 respectfully requests that the Court approve the Stipulated Injunction regardless of how the Court rules
21 on the Motion for Intervention.

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27 ¹ Proposed Intervenors even read some nefarious purpose into the City’s laudible goal to
28 provide sufficient services so that no one has to live in a tent on the sidewalk. Supp. Br. at 1;
Friedenbach Dec. ¶ 11 (speculating that, because of the “Stipulated Injunction’s zero-tents goal,”
“unhoused Black Tenderloin residents are to be eliminated by police force.”)

1 Dated: June 22, 2020

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